

# HOUSE BILL No. 1435

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-3.1-25; IC 6-3.1-26.

**Synopsis:** Small business tax credits. Provides a state tax credit to a small business equal to: (1) 30% of the depreciable cost of certain property placed in service in a trade or business conducted by the small business when the small business places property in service in Indiana; or (2) 30% of the employee expenses incurred for new employees when the small business adds at least five jobs to the Indiana workforce.

**Effective:** July 1, 2003.

---

---

**Welch, Lytle, Espich, Borrer**

---

---

January 14, 2003, read first time and referred to Committee on Ways and Means.

---

---

C  
o  
p  
y



First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1435

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 6-3.1-25 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2003]:

4 **Chapter 25. Small Business Expansion Credit**

5 **Sec. 1. As used in this chapter, "acquire" means to:**

6 (1) **produce qualified property for use in the taxpayer's trade**  
7 **or business, including depreciable improvements to leased**  
8 **property; or**

9 (2) **obtain the use of qualified property by purchase.**

10 **Sec. 2. As used in this chapter, "credit" refers to a credit**  
11 **provided by this chapter against state tax liability.**

12 **Sec. 3. As used in this chapter, "depreciable cost" means the**  
13 **initial costs incurred by a taxpayer before putting qualified**  
14 **property into service that would be allowable as a depreciation**  
15 **deduction under Section 167 of the Internal Revenue Code or an**  
16 **amortization deduction under Section 197 of the Internal Revenue**  
17 **Code (as applicable), regardless of whether that method of**



C  
o  
p  
y

deduction is used by the taxpayer for federal income tax purposes.

Sec. 4. As used in this chapter, "pass through entity" means:

(1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2); or

(2) a

(A) partnership;

(B) trust;

(C) limited liability company; or

(D) limited liability partnership;

that is not taxed as a corporation under IC 6-3.

Sec. 5. As used in this chapter, "qualified property" refers to property that section 12 of this chapter indicates is eligible for a credit.

Sec. 6. As used in this chapter, "small business" means a sole proprietorship operated by a person, corporation, or pass through entity that:

(1) is independently owned and operated;

(2) is not dominant in its field of operation; and

(3) qualifies as a small business concern under the criteria established in 15 U.S.C. 632 (as effective July 1, 2003) and the definitions and standards established by the administrator of the federal Small Business Administration for a small business concern under 15 U.S.C. 632 (as effective July 1, 2003).

Sec. 7. As used in this chapter, "state tax liability" means tax liability for adjusted gross income tax under IC 6-3.

Sec. 8. As used in this chapter, "taxpayer" refers to a person or a corporation that has state tax liability in a taxable year or a pass through entity that is eligible for a credit under this chapter.

Sec. 9. As used in this chapter, "trade or business" means trade or business as the term is used in Section 167 of the Internal Revenue Code.

Sec. 10. As used in this chapter, "useful life" means the following:

(1) The period over which Section 167, 168, or 197 of the Internal Revenue Code (as applicable) requires a depreciation or allocation deduction to be taken for particular qualified property for federal income tax purposes, if the taxpayer does not elect to use a useful life determined under subdivision (2).

(2) The period that 26 CFR 167(a)-1 would require a depreciation deduction to be taken if that method were applicable to the property. However, this subdivision applies only if the taxpayer elects this method of calculating useful life

C  
o  
p  
y



in the manner prescribed by the department.

**Sec. 11. A taxpayer that:**

- (1) places qualified property in service in Indiana in a trade or business;
- (2) uses the qualified property in Indiana in a trade or business during the useful life of the qualified property; and
- (3) qualifies as a small business in the taxable year in which the taxpayer places the qualified property in service in Indiana;

is eligible for a credit.

**Sec. 12. Subject to sections 13 through 17 of this chapter, the following property is eligible for a credit under this chapter:**

- (1) Tangible or intangible property for which a deduction for depreciation is allowable under Section 167 of the Internal Revenue Code (including software that is not a Section 197 intangible, as determined under Section 197 of the Internal Revenue Code), regardless of whether the taxpayer takes a depreciation deduction under Section 167 of the Internal Revenue Code.
- (2) Any license, right, or interest in a patent, copyright, formula, process, design, pattern, know-how, format, or other similar item for which an amortization deduction is allowable under Section 197 of the Internal Revenue Code, regardless of whether the taxpayer takes an amortization deduction under Section 197 of the Internal Revenue Code.

**Sec. 13. (a)** This section does not apply to a nonexclusive license, right, or interest in property described in section 12(2) of this chapter that is acquired directly from the person, corporation, or pass through entity that controls the right to grant nonexclusive licenses, rights, or interests in the property.

**(b)** To be eligible for a credit, property must not have been used in any other trade or business in Indiana for at least one (1) year before it is acquired by the taxpayer.

**Sec. 14. Property is not eligible for a credit if:**

- (1) it is acquired from a shareholder, partner, or member of a taxpayer that has a relationship to the taxpayer described in Section 267(b) of the Internal Revenue Code;
- (2) it is acquired from a member of the family (as determined under Section 267 of the Internal Revenue Code) of a shareholder, partner, or member that directly, indirectly, beneficially, by attribution (as determined under Section 1567 of the Internal Revenue Code), or constructively owns at least

C  
o  
p  
y



fifty percent (50%) of the stock or other equity interest in a taxpayer;

(3) it is acquired by one (1) component member of a controlled group (as defined in Section 267 of the Internal Revenue Code) that includes the taxpayer or would be a component member if pass through entities were treated as corporations under Section 267 of the Internal Revenue Code;

(4) the basis of the property for federal income tax purposes, in the hands of the person acquiring it, is determined:

(A) in whole or in part by reference to the federal adjusted basis of the property in the hands of the person, corporation, or pass through entity from whom it was acquired; or

(B) under Section 1014(e) of the Internal Revenue Code; or

(5) the property is used to substantially replace other property used by:

(A) the taxpayer; or

(B) another person, corporation, or pass through entity described in subdivision (1), (2), or (3);

in a trade or business in Indiana.

**Sec. 15.** To be eligible for a credit, property must be primarily used in Indiana in a trade or business other than an excluded trade or business. For purposes of this section, rental or leasing of property to another person or entity shall be treated as an excluded trade or business.

**Sec. 16.** The following excluded property is not eligible for a credit:

(1) Motor vehicles licensed by the bureau of motor vehicles or by another state or country.

(2) Airplanes.

(3) Other off-premise transportation equipment.

**Sec. 17.** Property that is used in or as part of any of the following excluded facilities is not eligible for a credit:

(1) Private or commercial golf course.

(2) Country club.

(3) Massage parlor.

(4) Tennis club.

(5) Skating facility (including roller skating, skateboarding, or ice skating).

(6) Racquet sport facility (including any handball or racquetball court).

(7) Hot tub facility.



C  
o  
p  
y

(8) Suntan facility.

(9) Racetrack.

(10) Any facility the primary purpose of which is:

(A) retail food and beverage service;

(B) automobile sales or service; or

(C) other retail.

(11) Residential property.

(12) A package liquor store that holds a liquor dealer's permit under IC 7.1-3-10 or any other entity that is required to operate under a license issued under IC 7.1.

Sec. 18. The amount of the credit accruing for a taxable year is equal to the lesser of the following:

(1) Thirty percent (30%) of the depreciable cost of the qualified property placed in service in Indiana in a taxable year.

(2) Six hundred thousand dollars (\$600,000), in total, for all qualified property placed in service in Indiana in a taxable year.

Sec. 19. The taxpayer is eligible to:

(1) apply the credit to the taxpayer's tax liability; or

(2) distribute the credit to the taxpayer's members, shareholders, or partners (if the taxpayer is a pass through entity);

over five (5) taxable years beginning with the taxable year in which qualified property is placed in service in Indiana in a trade or business.

Sec. 20. Twenty percent (20%) of the credit amount determined under section 18 of this chapter, excluding any part of the credit carried forward from a prior taxable year, may be applied to the state tax liability of the taxpayer in a taxable year.

Sec. 21. If the amount of the credit, after applying any part of the credit that is carried forward from a prior taxable year, is greater than the taxpayer's state tax liability for the taxable year, the taxpayer may carry forward the unused part of the credit to not more than ten (10) subsequent taxable years. The amount of the tax credit that is applied to the taxpayer's state tax liability reduces the amount of the credit that may be carried forward to a subsequent taxable year. A taxpayer is not eligible to carry back or obtain a refund of any unused credit.

Sec. 22. (a) If a pass through entity does not have state tax liability against which the credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a credit



equal to:

- (1) the credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

(b) The credit provided under subsection (a) is in addition to a credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under this chapter. However, a pass through entity and a shareholder, partner, or member of the pass through entity may not claim a credit under this chapter for the same qualified property.

Sec. 23. To receive the credit provided by this chapter, a:

- (1) taxpayer; or
- (2) shareholder, partner, or member of a taxpayer that is a pass through entity;

must claim the credit on the person or corporation's annual state tax return or returns in the manner prescribed by the department. The person or corporation shall submit to the department all information that the department determines is necessary for the calculation of the credit provided by this chapter and for the determination of whether the person or corporation is eligible for the credit. The department may require a pass through entity to provide all information necessary to determine the amount of the credit to which a shareholder, partner, or member is entitled.

Sec. 24. For purposes of applying sections 25 through 26 of this chapter, if:

- (1) the taxpayer places in service in a taxable year qualified property with depreciable cost, in total, of more than two million dollars (\$2,000,000); and
- (2) section 18 of this chapter limits the total amount of the credit that is available for that taxable year to six hundred thousand dollars (\$600,000).

Sec. 25. The credit is reduced to zero (0) to the extent that the taxpayer uses:

- (1) another credit provided under this article for the same property, an investment in the same property, compensation paid to an employee who uses the same property, or a project that involves the same property; or
- (2) an enterprise zone deduction under IC 6-3-2-8 for compensation paid to an employee who uses the same property.

C  
o  
p  
y



1       Sec. 26. Except as provided in sections 27 through 29 of this  
2 chapter, the credit provided by this chapter is reduced if the  
3 taxpayer:

- 4       (1) disposes of the qualified property; or  
5       (2) otherwise permanently ceases to use the property as  
6       qualified property;

7 before the end of the useful life of the qualified property.

8       Sec. 27. A credit is not reduced to the extent that the qualified  
9 property ceases to be used in Indiana as a result of a loss arising  
10 from fire, storm, other casualty, or theft that would qualify for a  
11 casualty loss under Section 165 of the Internal Revenue Code.  
12 However, if the property is replaced, the replacement property is  
13 not eligible for an additional credit under this chapter.

14       Sec. 28. A credit is not reduced to the extent that property is:

- 15       (1) replaced by other property providing the same or similar  
16 function (with or without enhancements); and  
17       (2) the replacement property is used as qualified property for  
18 at least the remainder of the useful life of the replaced  
19 property.

20       Sec. 29. (a) A credit is not reduced to the extent that:

- 21       (1) the basis of the property for federal income tax purposes,  
22 in the hands of the person, corporation, or pass through entity  
23 acquiring it or otherwise obtaining control over it, is  
24 determined:

25       (A) in whole or in part by reference to the federal adjusted  
26 basis of the property in the hands of the person,  
27 corporation, or pass through entity from whom it was  
28 acquired; or

29       (B) under Section 1014(e) of the Internal Revenue Code;

- 30       (2) the person, corporation, or pass through entity acquiring  
31 the property elects, in the manner prescribed by the  
32 department, to be treated as the taxpayer for purposes of this  
33 chapter; and

34       (3) the property continues to be used as qualified property for  
35 at least the remainder of the useful life of the replaced  
36 property, as determined as if the property were in the hands  
37 of the original taxpayer that was eligible for the credit.

38       (b) The electing person, corporation, or pass through entity  
39 shall be treated as the taxpayer for purposes of taking any credit  
40 under this chapter and paying any recaptured amount under this  
41 chapter.

42       Sec. 30. The reduced credit under section 26 of this chapter is

C  
o  
p  
y





the amount determined under STEP FOUR of the following formula:

**STEP ONE:** Determine the number of months in the useful life of the qualified property beginning with the month in which the qualified property is placed in service in Indiana in a trade or business.

**STEP TWO:** Determine the number of months that the property was used as qualified property beginning with the month in which the qualified property is placed in service in Indiana in a trade or business.

**STEP THREE:** Divide the STEP TWO amount by the STEP ONE amount.

**STEP FOUR:** Multiple the depreciable cost of the property by the STEP THREE result.

**Sec. 31. (a)** The difference between:

(1) the total amount of the credit for qualified property that is:

(A) applied to state tax liability; or

(B) distributed to the shareholders, partners, or members of the taxpayer, if the taxpayer is a pass through entity; and

(2) the amount of the reduced credit;

shall be treated as a listed tax due from the taxpayer on the day that the person, corporation, or pass through entity's annual return is due for the taxable year in which the property permanently ceases to be used as qualified property.

(b) However, the amount due under subsection (a) from a pass through entity is reduced to the extent that the pass through entity presents proof to the department that:

(1) credits distributed to shareholders, partners, or members have not been applied to any state tax liability; or

(2) the shareholders, partners, or members have paid the tax liability due from the pass through entity.

(c) If the taxpayer is a pass through entity, each of the shareholders, partners, or members of the pass through entity shall be treated as having a listed tax due for any amount of the tax recapture that is not paid by the pass through entity in proportion to the total credits allocated to the shareholder, partnership, or member in or before the taxable year in which recapture occurs.

**Sec. 32.** The department may adopt rules under IC 4-22-2 and prescribe forms to implement this chapter.

SECTION 2. IC 6-3.1-26 IS ADDED TO THE INDIANA CODE



AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
JULY 1, 2003]:

**Chapter 26. Small Business Job Creation Credit**

**Sec. 1.** As used in this chapter, "credit" refers to a credit provided by this chapter against state tax liability.

**Sec. 2.** As used in this chapter, "employee expense" means the sum of the following, attributable to a new employee, that are incurred as out-of-pocket expenses by a taxpayer in a taxable year:

(1) Wages and other compensation, including amounts that constitute deferred compensation paid to a retirement plan that qualifies the employee for a deferral of the federal income taxes due on the amounts paid to the plan.

(2) The employer's share of Social Security taxes.

(3) State and federal unemployment taxes and any other employee related premiums or payments required under IC 22.

(4) Premiums or other payments made for pension, health care, disability, or death benefits for the employee or other person insured through the employee.

**Sec. 3.** As used in this chapter, "full-time employee" means an individual who is employed for consideration for at least thirty-five (35) hours each week or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment.

**Sec. 4. (a)** As used in this chapter "new employee" means a full-time employee first employed by a taxpayer:

(1) after the department of commerce issues a certification under section 11 of this chapter for the taxpayer; and

(2) in the project that is the subject of a credit certification under section 11 of this chapter.

**(b)** The term does not include any of the following:

(1) An employee of the taxpayer who performs a job that was previously performed by another employee, if that job existed for at least six (6) months before hiring the new employee.

(2) An employee of the taxpayer who was previously employed in Indiana by a related member of the taxpayer and whose employment was shifted to the taxpayer after the taxpayer received a certification under section 10 of this chapter.

(3) A child, grandchild, parent, or spouse (other than a spouse who is legally separated from the individual) of any individual who:

(A) is an employee of the taxpayer (or self-employed as the

C  
o  
p  
y



taxpayer); and

(B) has a direct or an indirect ownership interest of at least five percent (5%) in the profits, capital, or value of the taxpayer, as determined in accordance with Section 1563 of the Internal Revenue Code and regulations prescribed under Section 1563 of the Internal Revenue Code or would have at least a five percent (5%) if pass through entities were treated as corporations under Section 1563 of the Internal Revenue Code.

**Sec. 5.** As used in this chapter, "pass through entity" means:

(1) a corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);

(2) a:

(A) partnership;

(B) trust;

(C) limited liability company; or

(D) limited liability partnership;

that is not taxed as a corporation under IC 6-3.

**Sec. 6.** As used in this chapter, "related member" means a person, corporation, or pass through entity that, with respect to the taxpayer during all or any part of the taxable year, is any one (1) of the following:

(1) A shareholder, partner, or member of a taxpayer that has a relationship to the taxpayer described in Section 267(b) of the Internal Revenue Code.

(2) A member of the family (as determined under Section 267 of the Internal Revenue Code) of a shareholder, partner, or member that directly, indirectly, beneficially, by attribution (as determined under Section 1567 of the Internal Revenue Code), or constructively owns at least fifty percent (50%) of the stock or other equity interest in a taxpayer.

(3) One (1) component member of a controlled group (as defined in Section 267 of the Internal Revenue Code) that includes the taxpayer or would be a component member if pass through entities were treated as corporations under Section 267 of the Internal Revenue Code.

**Sec. 7.** As used in this chapter, "small business" means a sole proprietorship operated by a person, a corporation, or a pass through entity that:

(1) is independently owned and operated;

(2) is not dominant in its field of operation; and

(3) qualifies as a small business concern under the criteria

C  
o  
p  
y



established in 15 U.S.C. 632 (as effective July 1, 2003) and the definitions and standards established by the administrator of the federal Small Business Administration for a small business concern under 15 U.S.C. 632 (as effective July 1, 2003).

Sec. 8. As used in this chapter, "state tax liability" means tax liability for adjusted gross income tax under IC 6-3.

Sec. 9. As used in this chapter, "taxpayer" refers to a person or corporation that has state tax liability in a taxable year or a pass through entity that is eligible for a credit under this chapter.

Sec. 10. A taxpayer may apply to the department of commerce to certify the taxpayer as a small business employer of at least five (5) new employees in the manner prescribed by the department of commerce. The taxpayer must provide sufficient information for the department of commerce to determine that the taxpayer is likely to qualify for the credit.

Sec. 11. (a) If the department of commerce determines that the applicant taxpayer is likely to qualify for a credit, the department of commerce shall certify that the taxpayer is a small business employer of at least five (5) new employees.

(b) The certification must include the following:

- (1) A detailed description of the project that will result in the employment of new employees.
- (2) A description of the credit that will be allowed for each taxable year under sections 13 and 14 of this chapter.
- (3) A description of the duration of the credit and the first taxable year for which the credit may be claimed under section 15 of this chapter.
- (4) A description of the specific method for determining the number of new employees employed during a taxable year.
- (5) A description of the requirement under section 20 of this chapter that the taxpayer must employ at least the number of new employees specified under subdivision (6) in the project for at least one hundred twenty (120) months beginning with the month specified in the certification.
- (6) The minimum number of new employees that must be employed in a project to qualify the taxpayer for a credit, which may not be less than five (5), using data provided by the taxpayer concerning the number of new employees that the taxpayer is likely to employ and any other data available to the department of commerce.
- (7) The maximum number of new employees for which a credit may be taken under this chapter, which may not exceed

C  
O  
P  
Y



fifty (50), using data provided by the taxpayer concerning the number of new employees that the taxpayer is likely to employ and any other data available to the department of commerce. (8) The maximum total credit amount that may be taken under this chapter, using data provided by the taxpayer concerning the likely employee expenses that will be incurred by the taxpayer and the number of new employees that the taxpayer is likely to employ and any other data available to the department of commerce.

(c) With the consent of the applicant taxpayer, a certification issued under this section may be amended at any time.

Sec. 12. (a) The department of commerce may not certify a full-time employee position as eligible for a credit if the full-time employee position is in a facility described in IC 6-3.1-25-17.

(b) A credit is not available under this chapter for employee expenses incurred for an individual employed in a facility described in IC 6-3.1-25-17.

Sec. 13. A taxpayer that:

- (1) is certified by the department of commerce as a small business employer of at least five (5) new employees;
  - (2) employees at least five (5) new employees in Indiana; and
  - (3) qualifies as a small business in the taxable year in which the taxpayer incurs employee expenses for new employees;
- is eligible for a credit.

Sec. 14. The amount of the credit in a taxable year is equal to thirty percent (30%) of the employee expenses attributable to the lesser of:

- (1) the number of new employee's employed by the taxpayer in each month of the taxable year; or
- (2) the number of new employees specified by the department of commerce in the certification under section 11 of this chapter.

However, the total amount of credits that may be taken in all taxable years may not exceed the amount specified in section 11(8) of this chapter.

Sec. 15. The credit is available for employee expenses in each of the five (5) taxable years beginning with the taxable year immediately following the taxable year in which the taxpayer is certified as a small business employer under section 11 of this chapter.

Sec. 16. If the amount of the tax credit, after applying any part of the credit that is carried forward from a prior taxable year, is

C  
o  
p  
y



greater than the taxpayer's state tax liability for the taxable year, the taxpayer may carry forward the unused part of the credit to not more than ten (10) subsequent taxable years. The amount of the tax credit that is applied to the taxpayer's state tax liability reduces the amount of the credit that may be carried forward to a subsequent taxable year. A taxpayer is not eligible to carry back or obtain a refund of any unused credit.

Sec. 17. (a) If a pass through entity does not have state tax liability against which the credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a credit equal to:

- (1) the credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

(b) The credit provided under subsection (a) is in addition to a credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under this chapter. However, a pass through entity and a shareholder or partner of the pass through entity may not claim a credit under this chapter for the same new employees.

Sec. 18. To receive the credit provided by this chapter, a:

- (1) taxpayer; or
- (2) shareholder, partner, or member of a taxpayer that is a pass through entity;

must claim the credit on the individual or entity's annual state tax return or returns in the manner prescribed by the department. The individual or entity shall submit to the department all information that the department determines is necessary for the calculation of the credit provided by this chapter and for the determination of whether the individual or entity is eligible for the credit. The department may require a pass through entity to provide sufficient information for the department to determine the amount of the credit to which a shareholder, partner, or member is entitled.

Sec. 19. The credit is reduced to zero (0) to the extent that the taxpayer uses:

- (1) another credit provided under this article for the same project, property used in the same project, an investment in the same project, or compensation paid to an employee who is employed in the same project or who uses property that is part of the same project; or



C  
O  
P  
Y

(2) an enterprise zone deduction under IC 6-3-2-8 for compensation paid to an employee who is employed in the same project or who uses property that is part of the same project.

Sec. 20. (a) Except as provided in sections 21 through 22 of this chapter, the credit is reduced in any taxable year to the extent that the taxpayer employs in the project fewer than the number of new employees specified by the department of commerce in the certification under section 11 of this chapter during any of the one hundred and twenty (120) consecutive months beginning with the month specified in the certification under section 11 of this chapter.

Sec. 21. A credit is not reduced for any month to the extent that the failure to employ at least the number of new employees specified by the department of commerce in the certification under section 11 of this chapter is a temporary reduction in employment that occurs as a result of:

- (1) a labor dispute; or
- (2) a loss arising from fire, storm, other casualty, or theft that would qualify for a casualty loss under Section 165 of the Internal Revenue Code.

Sec. 22. (a) A credit is not reduced to the extent that:

- (1) ownership or control of substantially all of the project is transferred to another person, corporation, or pass through entity;
- (2) the person, corporation, or pass through entity acquiring the project elects, in the manner prescribed by the department, to be treated as the taxpayer for purposes of this chapter; and
- (3) the project continues to employ the number of new employees specified by the department of commerce in the certification under section 11 of this chapter after it is acquired for the remainder of the period described in section 20 of this chapter.

(b) The electing person, corporation, or pass through entity shall be treated as the taxpayer for purposes of taking any credit under this chapter and paying any recaptured amount under this chapter.

Sec. 23. The reduced credit under section 20 of this chapter is the amount determined under STEP NINE of the following formula:

STEP ONE: Determine the period of time beginning with the month specified by the department of commerce in the

C  
o  
p  
y



certification under section 11 of this chapter through the earlier of:

- (A) the last month of the current taxable year; or
- (B) the last month that the taxpayer is required under section 20 of this chapter to employ new employees.

STEP TWO: For each month in the period determined under STEP ONE, determine the lesser of:

- (A) the number of new employees that the taxpayer employed in the project in the month; or
- (B) the number of employees specified as eligible for a credit in the certification under section 11 of this chapter.

STEP THREE: Determine the sum of the amounts determined under STEP TWO.

STEP FOUR: Determine the greater of zero (0) or the number of months remaining after the last month determined under STEP ONE through the last month that the taxpayer is required under section 20 of this chapter to employ new employees.

STEP FIVE: Multiple the STEP FOUR amount by the lesser of:

- (A) the number of employees specified as eligible for a credit in the certification under section 11 of this chapter, if the reduction in employment is not a permanent reduction in employment; or
- (B) zero (0), if the reduction in employment is a permanent reduction in employment.

STEP SIX: Add the STEP THREE amount and the STEP FIVE amount.

STEP SEVEN: Multiply one hundred twenty (120) by the number of employees specified as eligible for a credit in the certification under section 11 of this chapter.

STEP EIGHT: Divide the STEP SIX result by the STEP SEVEN result.

STEP NINE: Multiply the maximum credit amount specified by the department of commerce in the certification under section 11 of this chapter by the STEP EIGHT result.

Sec. 24. (a) The difference between:

(1) the total amount of the credit for new employee expenses that is:

- (A) applied to state tax liability ; or
- (B) distributed to the shareholders, partners, or members of the taxpayer, if the taxpayer is a pass through entity;

C  
o  
p  
y





1 and

2 (2) the amount of the reduced credit;  
3 shall be treated as a listed tax due on the day that the person,  
4 corporation, or pass through entity's annual return is due for the  
5 taxable year in which the taxpayer temporarily fails or  
6 permanently ceases to employ at least the number of new  
7 employees specified by the department of commerce in the  
8 certification under section 11 of this chapter.

9 (b) The amount due is reduced by any amount of the credit that  
10 is recaptured in a prior taxable year.

11 (c) The amount due from a pass through entity is reduced to the  
12 extent that the pass through entity presents proof to the  
13 department that:

14 (1) credits distributed to shareholders, partners, or members  
15 have not been applied to any state tax liability; or

16 (2) the shareholders, partners, or members have paid the tax  
17 liability due from the pass through entity.

18 (d) If the taxpayer is a pass through entity, each of the  
19 shareholders, partners, or members of the pass through entity shall  
20 be treated as having a listed tax due for any amount of the tax  
21 recapture that is not paid by the pass through entity. The amount  
22 due from a shareholder, partner, or member is the proportionate  
23 amount of the total credits allocated to the shareholder,  
24 partnership, or member in or before the taxable year in which  
25 recapture occurs.

26 Sec. 25. The department may adopt rules under IC 4-22-2 and  
27 prescribe forms to implement this chapter.

28 SECTION 3. [EFFECTIVE JULY 1, 2003] (a) Notwithstanding  
29 IC 6-3.1-25-11, as added by this act, property acquired before July  
30 1, 2003, or placed in service before January 1, 2004, is not eligible  
31 for a credit under IC 6-3.1-25-11, as added by this act.

32 (b) Notwithstanding IC 6-3.1-26-13, as added by this act,  
33 employee expenses incurred before December 31, 2003, are not  
34 eligible for a credit under IC 6-3.1-26-13, as added by this act.

C  
o  
p  
y

